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OFFICE OF PETITIONS

In re Application of
Suetsugu et al.
Application No. 10/664,355
Filed: September 17, 2003
Title: Negative Type Resist Composition

ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed July 11, 2007.

The petition to withdraw the holding of abandonment is **Dismissed**.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

This above-identified application became abandoned for failure to timely file a proper reply within the meaning of 37 CFR 1.113 to the final Office Action of February 8, 2006. The final Office Action set a three (3) month shortened statutory period for reply. An amendment was filed on May 8, 2006. An advisory action was mailed on May 26, 2006, informing applicant that the May 8, 2006 amendment failed to place the application in condition for allowance. A second amendment after final Office action and two month extension of time were filed on July 10, 2006. This petition was held abandoned on July 9, 2006. A Notice of Abandonment was mailed on May 23, 2007.

Petitioner contends the holding of abandonment should be withdrawn because a timely reply to the final Office action was submitted on July 10, 2006.

A review of the Office record shows that the Office received the amendment after final Office Action on July 10, 2006. The Notice of abandonment shows that the application went abandoned not for the failure to reply to the final Office Action, but for the failure to submit a reply within the meaning of 37 CFR 1.113. The amendment submitted on July 10, 2006 was required to place the application in condition for allowance. Based on the

Further, pursuant to 37 CFR 1.116 (b) the admission of, or refusal to admit, any amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135, or the reexamination from termination. MPEP 711.03 (c) is clear that an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal, when the applicant simply permits the maximum extendable statutory period for reply to expire while awaiting a notice of allowance or other action.

Further correspondence with respect to this matter should be addressed as follows:

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